

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

GARY MILLER, On Behalf Of Himself and All
Others Similarly Situated,

Plaintiff,

- against -

MORGAN STANLEY & CO. INC.,

Defendant.

Case No. 08-cv-3012 (AKH)

SHARON SHAWN JAMAIL, Individually and
On Behalf of All Others Similarly Situated,

Plaintiff,

- against -

MORGAN STANLEY and MORGAN
STANLEY & CO., INC.,

Defendants.

Case No. 08-cv-3178 (AKH)

**REPLY IN SUPPORT OF THE MOTION OF THE SMITH GROUP FOR
CONSOLIDATION OF ACTIONS, APPOINTMENT AS LEAD
PLAINTIFF, AND APPROVAL OF SELECTION OF COUNSEL**

Class members Donald Smith and Sam Solovey (collectively, the “Smith Group”), respectfully submit this reply in further support of their motion for consolidation of the above-captioned actions, appointment as Lead Plaintiff, and approval of their selection of counsel.

On May 27, 2008, the Smith Group timely filed a motion, pursuant to Fed. R. Civ. P. 42(a) and the Private Securities Litigation Reform Act (“PSLRA”), 15 U.S.C. § 78u-4(a)(3)(B), for consolidation of the *Miller* and *Jamail* actions, its appointment as Lead Plaintiff, and approval of its selection of counsel. *See* Docket Nos. 6-8.

The Smith Group demonstrated that the *Miller* and *Jamail* actions should be consolidated for all purposes. The cases assert the same claims under the Securities Exchange Act of 1934 against Morgan Stanley, arise out of the same course of conduct, and present common questions of law and fact. Accordingly, the Court should consolidate the *Miller* and *Jamail* actions.

In support of its motion for appointment as Lead Plaintiff, the Smith Group demonstrated that it has a financial interest of \$2,500,000 in the outcome of the litigation. Named plaintiff Gary Miller and Class members Brian Frank, Gil Halasz, Harold Weinberg, Michael Pepe, Sr., and James Dougherty (collectively, the “Miller Group”) filed a competing motion in which they demonstrated an aggregate financial interest of no more than \$1,950,000. *See* Docket Nos. 3-5.

On June 13, 2008, the Smith Group filed its response to the Miller Group’s motion for appointment as Lead Plaintiff. *See* Docket No. 9. In its response, the Smith Group demonstrated that it has the largest financial interest in the relief sought and, therefore, was presumed to be the “most adequate plaintiff” to represent the Class. 15 U.S.C. § 78u-4(a)(3)(B)(iii). The Smith Group also demonstrated that it satisfies the typicality and adequacy requirements for appointment as Lead Plaintiff, as set forth in 15 U.S.C. § 78u-4(a)(3)(B)(iii). The Miller Group did not file any response in the *Miller* or *Jamail* actions, and appears to have abandoned its motion.

Because the Smith Group has satisfied all of the Lead Plaintiff requirements of the PSLRA and its motion is apparently no longer opposed, the Smith Group respectfully requests that this Court: (1) consolidate the *Miller* and *Jamail* actions; (2) appoint Class members Donald

Smith and Sam Solovey as Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(i); and (3) approve the Smith Group's selection of counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v).

DATED: June 23, 2008

Respectfully submitted,

GIRARD GIBBS LLP

By: Jonathan K. Levine
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CERTIFICATE OF SERVICE

I, Jonathan K. Levine, hereby certify that on June 23, 2008, I caused the following document(s) to be filed electronically with the United States District Court for the Southern District of New York through the Court's mandated ECF service:

1. REPLY IN SUPPORT OF THE MOTION OF THE SMITH GROUP FOR CONSOLIDATION OF ACTIONS, APPOINTMENT AS LEAD PLAINTIFF, AND APPROVAL OF SELECTION OF COUNSEL

Counsel of record are required by the Court to be registered e-filers, and as such are automatically e-served with a copy of the document(s) upon confirmation of e-filing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23th day of June, 2008 at San Francisco, California.

/S/ Jonathan K. Levine